

GELBER, GELBER, INGERSOLL & KLEVANSKY, A Law Corporation

SIMON KLEVANSKY 3217-0

ALIKA L. PIPER 6949-0

CARISA LIMA KA'ALA HEE 7372-0

745 Fort Street, Suite 1400

Honolulu, Hawaii 96813

Telephone No. (808) 524-0155

Facsimile No. (808) 531-6963

Email: sklevansky@ggik.com; apiper@ggik.com; kaalahee@ggik.com

Attorneys for Debtors

CASE BIGELOW & LOMBARDI, A Law Corporation

TED N. PETTIT 4287-0

CHRISTOPHER J. MUZZI 6939-0

Pacific Guardian Center, Mauka Tower

737 Bishop Street, Suite 2600

Honolulu, Hawaii 96813

Telephone No. (808) 547-5400

Facsimile No. (808) 523-1888

Email: tpettit@casebigelow.com; cmuzzi@casebigelow.com

Counsel for The Official Committee of Unsecured Creditors
of Palama Meat Company, Inc. and H&W Distributors, Inc.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII**

In re) Case No. 03-01088
) (Chapter 11)
H&W FOODS ACQUISITION CORP.) (Jointly Administered)
(now known as Liquidation One, Inc.), et al.,) (Honorable Robert J. Faris)
)
Debtors.)
)

This document relates to:

ALL CASES

) HEARING
) Date: January 18, 2005
) Time: 2:00 p.m.
) Judge: Honorable Robert J. Faris

**FINDINGS OF FACT AND CONCLUSIONS OF LAW RESPECTING
CONFIRMATION OF THE THIRD AMENDED JOINT PLAN OF
LIQUIDATION, FILED ON NOVEMBER 16, 2004**

On November 16, 2004, LIQUIDATION ONE, INC. (formerly known as H&W Foods Acquisition Corp.), LIQUIDATION TWO, INC. (formerly known as Palama Meat Company, Inc.), and LIQUIDATION THREE, INC. (formerly known as H&W Distributors, Inc.)(collectively the “Debtors”) and the Unsecured Creditors’ Committees of In re H&W Distributors, Inc. and In re Palama Meat Company, Inc. (collectively the “Committees”) filed the Third Amended Joint Plan of Liquidation (the “Joint Plan”).

A hearing to consider confirmation of the Joint Plan was held on January 18, 2005. The appearances of counsel were noted on the record.

The Court has considered the “Declaration of John R. Loevenguth Certifying the Methodology for the Tabulation of Votes on and Results of Voting with Respect to the Third Amended Joint Plan of Liquidation, filed on November 16, 2004”, filed herein on January 12, 2005 (the “Loevenguth Declaration”), the “Declaration of Counsel in Support of the Third Amended Joint Plan of Liquidation, filed on November 16, 2004,” filed herein on January 18, 2005 (the “Counsel Declaration”), and the objections to confirmation of the Joint Plan, and has heard the arguments of counsel at the hearing.

Based on the Declaration and the entire record of this case, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On November 16, 2004, the Debtors and the Committees filed the Joint Plan and a Disclosure Statement for the Joint Plan.

2. Pursuant to the “Order (A) Approving the Disclosure Statement as Containing Adequate Information; (B) Approving the Proposed Form, Scope, and Nature of the Solicitation, Balloting, Tabulation and Notices with Respect to Disclosure Statement and Plan of Liquidation; (C) Scheduling a Hearing to Consider Confirmation of Plan of Liquidation; and (D) Establishing Related Discovery and Confirmation Procedures, Deadlines and Notices”, filed on November 24, 2004 (the “Order”), the Court, among other things, approved the Disclosure Statement as containing adequate information, and set the hearing for confirmation of the Joint Plan for January 18, 2005 (the “Confirmation Hearing”).

3. On December 6, 2004 (the “Service Date”), the Joint Proponents served a "Solicitation Package" consisting of (i) the approved Disclosure Statement and a copy of the proposed Joint Plan; (ii) a notice of the Confirmation Hearing and of the deadlines for voting (the "Confirmation Hearing Notice"); (iii) an appropriate ballot or ballots (if the intended recipient is in a class that is entitled to vote on the Joint Plan); and (iv) one or more introductory letters stating, *inter alia*, the

recommendations of the Debtors and the Committees concerning acceptance of the Joint Plan, on the following entities:

(1) All known claimants (A) that have filed a proof of claim or interest in this case that has not been disallowed or expunged by an order of this Court, or (B) for whom the Debtors scheduled in their "Schedules of Assets and Liabilities" (as amended, the "Schedules") a liquidated, undisputed, noncontingent claim in an amount of more than \$0;

(2) All parties who have requested special notice in this case (the "Special Notice Parties") and the governmental entities enumerated in Bankruptcy Rule 2002(j); and

(3) Parties to any remaining executory contracts or unexpired leases with the Debtors.

4. As set forth in the Loevenguth Declaration", the Joint Plan was rejected by (i) Class 6 (Marwit/LEG Claims) in the H&W Foods Acquisition Corp. case, and (ii) Class 5 (General Unsecured Claims) in the Palama Meat Company, Inc. case.

5. The Debtors requested that the Court confirm the Joint Plan, notwithstanding the non-acceptance of the Joint Plan by the above-referenced classes, pursuant to the "cram-down" provisions of 11 U.S.C. § 1129(b). That section allows the Joint Plan to be "crammed down" on nonaccepting classes of claims or interests

if: (1) at least one impaired class accepts the Joint Plan; (2) the Joint Plan otherwise meets all the requirements of section 1129(a), except for the requirement of section 1129(a)(8) that each class either accept the Joint Plan or not be impaired under the Joint Plan; and (3) the Joint Plan does not “discriminate unfairly” and is “fair and equitable” toward each impaired class that has not voted to accept the Joint Plan, as such terms are defined in section 1129(b) of the Code and interpreted in applicable case law.

6. All of the requirements for cram down are satisfied in this case.

7. First, more than one impaired class in each estate (e.g., Bank of Hawaii in Class 1 and the reclamation claimants in Class 3) have voted to accept the Joint Plan.

8. Second, as explained below, all of the requirements in Bankruptcy Code § 1129(a), except the requirement of § 1129(a)(8) are satisfied:

A. The Joint Plan complies with the applicable provisions of the Bankruptcy Code, as required by 11 U.S.C. § 1129(a)(1).

B. The Debtors and the Committees, as joint proponents of the Joint Plan, have complied with the applicable provisions of the Bankruptcy Code, as required by 11 U.S.C. § 1129(a)(2).

C. Pursuant to 11 U.S.C. § 1129(a)(3), the Debtors and the Committees have proposed the Plan in good faith and not by any means forbidden by law.

D. As required by 11 U.S.C. § 1129(a)(4), no payment shall be made under the Joint Plan by the Debtors, or by a person issuing securities or acquiring property under the Plan, for services or for costs and expenses in or in connection with the case, or in connection with the Joint Plan and incident to the case, unless the payment is approved by the Court.

E. The Debtors and Committees have disclosed, on page 66 in the Disclosure Statement, the identity and affiliation of the person proposed to serve, after confirmation of the Joint Plan, as director and officer of each of the Debtors, as required by 11 U.S.C. § 1129(a)(5)(i).

F. No governmental regulatory commission has jurisdiction over any rates of the Debtors, and therefore, 11 U.S.C. § 1129(a)(6) is not applicable.

G. Pursuant to 11 U.S.C. § 1129(a)(7)(A)(ii), all holders of claims and interest will receive under the Joint Plan an amount that is not less than the amount that such holder would so receive or retain if the Debtors were liquidated under Chapter 7.

H. As required by 11 U.S.C. § 1129(a)(9)(A), the Joint Plan provides for the payment of the allowed amount of compensation of services rendered

and reimbursement of costs of all professional persons employed by the Debtors, in cash, on the later of the effective date of the Joint Plan, or the date upon which any order awarding fees and expenses becomes a final order, as set forth in paragraph 2 of the Settlement Agreement between the Debtors, the Bank of Hawaii, and the Committees. In addition, paragraph 4.02 of the Joint Plan provides that all other administrative claims shall be paid (i) on the effective date of the Joint Plan, (ii) on the date upon which payment is due and payable, or (iii) as soon as practicable after the claim is allowed, whichever is later.

I. In compliance with 11 U.S.C. § 1129(a)(9)(B), the Joint Plan provides that holders of priority claims of the kind specified in said section, if any, will receive cash on the effective date of the Joint Plan equal to not less than the allowed amount of such claim or, if paid thereafter, deferred cash payments equal to not less than the allowed amount of such claim on said date.

J. As required by 11 U.S.C. § 1129(a)(9)(C), the Joint Plan provides that the allowed amount of each priority government claim of the kind specified in Bankruptcy Code § 507(a)(8) shall be paid by the Debtors (i) on the effective date of the Joint Plan or as soon as practical after the effective date of the Joint Plan, or (ii) in deferred quarterly cash payments, over a period not exceeding six years after the date of assessment of each allowed claim, with interest on deferred installments at the interest rate applicable to such claims under statute and regulation.

K. Classes 1 and 3, which are impaired, have accepted the Joint Plan, determined without including any acceptance of the Joint Plan by an insider, pursuant to 11 U.S.C. § 1129(a)(10).

L. As set forth in the feasibility analysis described in the Disclosure Statement, the Joint Plan contemplates that all assets of the Debtors will ultimately be disposed of and all proceeds of such assets will be distributed to the Debtors' creditors and parties in interest pursuant to the terms of the Joint Plan. Because no further financial reorganization of the Debtors will be possible, the Joint Plan meets the requirements of 11 U.S.C. § 1129(a)(11).

M. The Debtors have paid the filing fees required under 28 U.S.C. § 1930(a)(3). The Joint Plan provides for the payment of the post-confirmation quarterly fees to the Office of the United States Trustee required under 28 U.S.C. § 1930(a)(6). Thus, as required by 11 U.S.C. § 1129(a)(12), all of the fees under 28 U.S.C. § 1930 have either been paid, or the Joint Plan provides for their payment.

N. The Debtors have not obligated themselves to provide any retiree benefits as defined in Bankruptcy Code § 1114, and, accordingly, 11 U.S.C. § 1129(a)(13) is not applicable.

9. Finally, the Joint Plan does not "discriminate unfairly" and is "fair and equitable" toward each impaired class that has not voted to accept the Joint Plan.

CONCLUSIONS OF LAW

A. All of the applicable requirements for plan confirmation set forth in Bankruptcy Code § 1129(b) have been met.

B. Notice of the Confirmation Hearing was given in compliance with 11 U.S.C. § 1128, Fed. R. Bankr. P. 2002 and 3017, and the Order, and the notice was adequate and sufficient for all purposes.

C. The Confirmation Hearing held on January 18, 2005 complies with 11 U.S.C. § 1128.

D. An order confirming the Joint Plan should be and shall be entered forthwith. The Court expressly determines that there is no reason for delay and the Court expressly directs that the order confirming the Joint Plan shall be entered as a final judgment.

APPROVED AS TO FORM:

/s/ Ted N. Pettit
TED N. PETTIT, ESQ.
CHRISTOPHER J. MUZZI, ESQ.
Attorneys for Unsecured Creditors' Committees

/s/ Katherine G. Leonard
KATHERINE G. LEONARD, ESQ.
Attorney for Bank of Hawaii

/s/ Rachel Moriyama
RACHEL MORIYAMA, ESQ.
Attorney for the United States of America

/s/ Cynthia Johiro
CYNTHIA JOHIRO, ESQ.
Attorney for State of Hawaii,
Department of Taxation

/s/ Stephen Jones
STEPHEN JONES, ESQ.
Attorney for Excel Corporation

/s/ Mark Bradshaw

MARK BRADSHAW, ESQ.

Attorney for Marwit Capital Company and
LEG Partners, SBIC

RON KOTOSHIRODO, ESQ.

Attorney for National Beef Packing Co.

1800896.wpd

FINDINGS OF FACT AND CONCLUSIONS OF LAW RESPECTING CONFIRMATION OF THE THIRD AMENDED
JOINT PLAN OF LIQUIDATION, FILED ON NOVEMBER 16, 2004

In re H&W Foods Acquisition Corp., et al., Case No. 03-01088, USBC Hawaii